

# NEBRASKA DEPARTMENT OF INSURANCE

## SOLICITATION FOR PROPOSAL (SFP)

### WORKERS' COMPENSATION INSURANCE ASSIGNED RISK PLAN

The Nebraska Department of Insurance (Department) is seeking to secure an agreement with one or more workers' compensation insurers to provide coverage for Nebraska employers that are in good faith entitled to, but are unable to obtain, workers' compensation insurance through ordinary methods. The effective date of the agreement will be January 1, 2019. The mechanism through which this assigned risk workers' compensation coverage will be provided is referred to in this solicitation as the Nebraska Workers' Compensation Insurance Plan (WCIP).

The purpose of this solicitation for proposal is to define the Department's minimum requirements, solicit proposals, and to obtain adequate information from bidders so that the Department may evaluate the services that contractors have to offer. This document serves as the entire solicitation for proposals to provide workers' compensation insurance for employers through the WCIP. Although this solicitation may appear similar to the general procedures for procurement of contractual services established by Neb. Rev. Stat. § 73-501 et. seq., please note that there is a specific exemption for professional services for residual pools at Neb. Rev. Stat. § 73-507(h).

#### *IMPORTANT NOTICE REGARDING UPDATES –*

If you represent an entity that has a possible interest in bidding, please send an e-mail to the Department's Property and Casualty Administrator, Connie Van Slyke. Ms. Van Slyke's e-mail address is [Connie.VanSlyke@nebraska.gov](mailto:Connie.VanSlyke@nebraska.gov). The fact that you provided an email address will be kept confidential – the Department will not make any disclosure about interested parties until after bidding has closed.

If the Department answers questions received from a potential bidder or other interested party, the questions and answers will be provided to all interested parties via email (if provided to Ms. Van Slyke) and public posting on the Department's web site. Answers and any other clarifications will be emailed and posted on the date specified in Part Four of this SFP.

## **PART ONE SCOPE OF WORK**

### **1. PLAN OF OPERATION**

The contractor shall submit a proposal to administer the WCIP and provide coverage for assigned risk employers.

### **2. CONTRACT WITH THE DEPARTMENT**

In the event of contract award, the Department will enter into a contract based upon the contractor's proposal and any details negotiated relating thereto. The contractor's proposal, this SFP, and any amendments to either document will be incorporated by reference into that contract. The executed contract will supersede any conflicting representations, commitments, conditions or agreements made orally or in writing prior to the execution of the contract. A copy of the current contract and executed amendment with the Travelers Property and Casualty Company of America is posted on the Department's website at <https://doi.nebraska.gov/consumer/workers-compensation>. The Department will require that the selected contractor enter into a similar contract.

### **3. SUITABILITY OF THE PLAN OF OPERATION**

Proposals must include a plan of operation. The suitability of the plan of operation in fulfilling the needs of the assigned risk employers shall be a primary consideration in the Department's award of this contract. The plan of operation must include at least the following items:

- A. Agent Instructions: The contractor must provide, or agree to provide by October 19, 2018, instructions in an electronic format suitable for placement on the Department's website that will provide agents and insureds with details regarding policy pricing, claims administration and all other items referenced by this Part of the SFP.
- B. Annual Meetings with Agents: The contractor must agree to annual open meetings with representatives of agents' associations. All such meetings must be held in Nebraska. The meetings may be held on a standalone basis or in conjunction with insurance-related meetings that a significant number of agents are likely to attend. At such meetings, representatives of the contractor are expected to provide a brief presentation to describe any problems or matters of interest and to answer attendees' questions. The Department of Insurance may waive any of these meetings with the prior consent of the agents' associations.

Unless waived, the first such meeting must be held between October 22 and November 30, 2018. Following the 2018 meeting, unless waived, an agent

meeting must be held annually except that no such meeting is required during the last year of the agreement period, renewal periods, or extension thereof. The Director on Insurance (Director), at the Director's sole discretion, may require the contractor to hold more frequent or additional agent meetings.

- C. Policy Binding, Issuance and Servicing Procedures: The plan of operation must provide procedures the contractor will follow for the timely binding of risks, issuance of policies, endorsements and certificates, billing of premium, collection of premium, premium audits, and responses to requests and inquiries. The proposal should provide for a means for a response to prospective insureds and their agents within two working days after receipt of a request for coverage. The response should either state that coverage will be provided, with effective date of coverage, or if problems exist with the request for coverage, provide a description of the problems preventing issuance. While specific internet-based utilities are not described in this SFP, the Department will consider whether one bidder or the next can provide more useful and user-friendly internet tools.
- D. Evidence of Eligibility: The plan must require prospective insureds to attest that they:
1. Have been denied coverage by at least two insurers licensed to write workers' compensation coverage;
  2. Are not in default on workers' compensation premiums;
  3. Have not failed to reimburse an insurer for amounts to be repaid pursuant to workers' compensation insurance written on a policy with a deductible;
  4. Have not denied an insurer reasonable access to books and records necessary for a premium audit;
  5. Have not defrauded or attempted to defraud an insurer; and
  6. Have established a safety committee pursuant to Neb. Rev. Stat. §§ 48-443 to 48-445 and are compliant with those statutes.

The denial of coverage by at least two insurers does not conclusively establish that an employer is unable to obtain workers' compensation insurance through ordinary methods, but the Department considers denial by two insurers to be an adequate check by the contractor in ordinary circumstances.

- E. Claims Administration: The plan of operation must provide the contractor's claims administration procedures. The administrative procedures must:
1. Indicate policyholder procedures for reporting claims;

2. Include a description of the contractor's claims investigation procedures; and
  3. Include a description of the contractor's procedures for both claimant and third party fraud investigations.
- F. Loss Control Services: The plan of operation must include a description of the loss control services that will be implemented. The proposal must include the criteria the contractor will use in deciding which employers will receive loss control services and the type of services that will be provided. At a minimum, loss control surveys must be provided within six months of first writing for employers with Nebraska premiums over \$25,000, and for employers with Nebraska premiums over \$5,000 that have experience modifiers of 1.40 or greater. Loss control surveys must be provided at least once per year for an employer requesting a survey.
- G. Cost Control Services: The plan of operation shall include a description of the contractor's claims cost control measures including, but not limited to, utilization review of medical services, managed care services, disability management and return to work programs.
- H. Safety Committees Required: The contractor must confirm the operation of employer safety committees prior to binding coverage. The contractor shall commence policy cancellation if it discovers that an insured is not in compliance with this requirement provided, however, that it shall revoke such cancellation prior to its effective date if the employer takes steps to come into compliance.
- I. Premium Payment Plans: At a minimum, the contractor shall provide a quarterly payment plan for insured employers.
- J. Payment of Commission: Producer commissions shall be calculated in accordance with the following scale:

First	\$1,000	8%
Next	\$4,000	5%
Next	\$95,000	3%
Over	\$100,000	2%

- K. Size-of-Risk Discounts: The following size-of-risk discount table shall be used:

First	\$5,000	0%
Next	\$95,000	10.9%
Next	\$400,000	12.6%
Over	\$500,000	14.4%

#### 4. CONTRACT PRICE

- A. The Department and the State of Nebraska shall not be liable for any costs under this contract. The compensation to the contractor will consist of the premiums received from assigned risk employers for issuing workers' compensation insurance coverage plus, if the contract allows, a subsidy from the voluntary market in the event of a catastrophic loss. For an explanation of the subsidy option, see Part Five of this SFP.
- B. Bid pricing shall be in the form of a loss cost multiplier (LCM) or multipliers and a rating plan for the determination of minimum premiums. (See item C, which follows, for a discussion of minimum premiums.)

Nebraska's  $\pm 40\%$  pricing flexibility in the voluntary market for workers' compensation does not apply to the WCIP.

NCCI experience rating will apply to the WCIP in the normal manner.

- C. The Department's preferred pricing method uses a flat dollar expense constant, plus the LCM times the NCCI loss cost, with the sum being subject to a maximum minimum premium. The plan may provide for the recalculation of the minimum premium when no payroll is reported for the policy's governing classification. The Department does not encourage the use of expense constants or multipliers higher than those in normal use, but expects that assigned risk minimum premiums will be higher because the assigned risk LCM is higher. A maximum minimum premium of \$1000 is suggested. This amount, while higher than usually found in the voluntary market, does not represent an excessive assigned risk penalty.
- D. If loss experience indicates that WCIP premiums would be unreasonably high, the contractor and the Director may reach an agreement wherein the contractor covers a portion of the loss incurred, with the remainder of the loss subsidized by the voluntary market.

Because Neb. Rev. Stat. § 44-3,158(2)(b) only provides for a subsidy "if the Director determines that the cost of workers' compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement would be unreasonably high," and § 44-3,158(2)(b) dictates that rates below a 2.50 LCM will be presumed reasonable, the subsidy is only available where experience demonstrates that an LCM over 2.50 is appropriate. The contemplated agreement would set premiums closer to a 2.50 LCM. In exchange for the lower LCM, the contractor would receive assurance that in the event of a catastrophic loss, the loss beyond a certain point would be subsidized by the voluntary market.

- E. Bidders may provide a bid, or optional language within a bid, that contemplates incurring all losses without any subsidy from the voluntary market, even if all or

some of the LCMs for such a bid would be in excess of 2.50. An unsubsidized bid containing LCMs in excess of 2.50 would not be rejected solely on that basis.

- F. Subject to the exception noted below, the bid pricing in the form of an LCM or LCMs and objective rating plans applied to NCCI loss costs must be guaranteed for the bid period. It is recognized and accepted that the NCCI files loss costs on a regular basis. The LCM or LCMs accepted for the contractor will apply to these updated NCCI loss costs as they become effective.

Exception: The indicated loss cost multiplier for a state's assigned risk business is viewed by some as being a function of the assigned risk plan size. To illustrate, the anti-selection involved when the state's assigned risk population is 3% of the market may be more adverse than when the assigned risk plan covers 10% of the state's market. While the indicated loss costs for the voluntary market would be higher when 97% of the market is written voluntarily versus when 90% is written voluntarily, the effect would not be expected to fully offset the effects of anti-selection on the indicated assigned risk LCM. As such, insurers may make proposals that will change the assigned risk LCM and/or subsidy trigger provisions annually, according to the market share or size of the assigned risk plan.

## 5. AGENT INTERACTION

The proposal shall include provisions for agent of record notification regarding renewals, lapses in coverage, cancellations and reinstatements. The proposal shall provide agent of record access to written materials including but not limited to claims history.

## 6. CONTRACT TERM

At a minimum, the contract term shall be three years, from January 1, 2019, until December 31, 2021. Bids will also be accepted for four or five year terms. Bids that call for renewal periods of one year will also be accepted. The Department reserves the right to negotiate an extension without rebidding if the terms are comparable to those on the expiring agreement. Such an extension can be agreed to during the original contract period or renewal period(s), but such an extension cannot exceed half of the time period of the original contract period term. In no case can the original contract period, renewal periods, and/or extensions exceed five years in total.

## 7. OTHER STATES COVERAGE

In its proposal, the contractor is encouraged to include optional coverage for employers with incidental or substantive exposures outside the State of Nebraska. Please note, however, that any assessment from the voluntary market in the event of

a catastrophic loss may not apply to losses incurred under the workers' compensation laws of states other than Nebraska.

## 8. TERRORISM COVERAGE

Nebraska does not allow insurers to exclude terrorism-related losses from workers' compensation coverage. This includes the WCIP.

# **PART TWO GENERAL TERMS AND CONDITIONS**

## 1. PROCURING AGENCY

This Solicitation for Proposal (SFP) is issued by the Department of Insurance (Department).

## 2. CONTRACTING AGENCY

The sole point of contact for technical and procedural questions is Connie Van Slyke at the Department. The Department will administer oversight of the services provided under the contract.

## 3. CLARIFICATION OF THE SPECIFICATIONS

A. If any additional information is necessary to assist the contractor in interpreting these specifications, questions must be submitted via e-mail. Submit questions to Connie Van Slyke at [Connie.VanSlyke@nebraska.gov](mailto:Connie.VanSlyke@nebraska.gov). Any questions will be reproduced, with answers, on the Department's website so that all interested parties will receive the benefit of the Department's answers.

B. Potential contractors and interested parties who have obtained a copy of this SFP and would like information posted to the Department's web site emailed to them directly should contact Connie Van Slyke and provide a designated e-mail address for receipt of information.

C. Questions concerning the SFP will be accepted until the date and time indicated in Part Four. Updates, addenda, and answers to questions will be posted on the Department's website and emailed to interested parties on or before the date provided in Part Four.

## 4. ERRORS AND OMISSIONS

The potential contractor shall not be allowed to take advantage of errors or omissions in these specifications. Where errors or omissions appear in these specifications, the potential contractor shall promptly notify the Department and provide a bid correcting for any errors or omissions.

## 5. PROPOSAL PREPARATION AND SUBMISSION

- A. Proposals should be prepared in strict accordance with the requirements of this solicitation. Each proposal should concisely delineate the contractor's capabilities to satisfy these requirements, with emphasis on completeness and clarity of content.
- B. Preparation of Proposal:
  - 1. The proposal must be typewritten or printed in ink.
  - 2. Where unit price differs from an extended figure, the unit price will govern.
  - 3. Where written words differ from figures, the amount stated in written words will govern.
  - 4. Alterations must be crossed out and the corrections thereto printed in ink or typewritten adjacent to the alterations. The persons who sign the proposal must initial the correction in ink. Erasures will not be allowed and may cause rejection of the proposal.
- C. Proposal Format: Proposals must include separate sections as described below:
  - 1. Section ONE may be used at the contractor's discretion. Contractor background, general product descriptions, and other relevant information may be included.
  - 2. Section TWO must include the contractor's proposed services, illustrations of methodology and other relevant information.
  - 3. Section THREE must include all pricing information.
  - 4. Section FOUR must describe any and all exceptions to requirements stated herein. Exceptions to the requirements stated herein could be cause for rejection of the proposal. An absence of an exception indicates agreement.
- D. In order to facilitate the proposal evaluation process, four copies of the proposal must be submitted to the Department. All proposals must state "CONFIDENTIAL PROPOSAL FOR THE NEBRASKA WORKERS COMPENSATION ASSIGNED RISK PLAN" and show the contractor's name and address on the outside of the package. The proposal must be delivered to:

Connie Van Slyke  
Nebraska Department of Insurance  
1135 M Street, Suite 300  
PO Box 82089  
Lincoln, NE 68501-2089



The Department will not be responsible for the premature opening of proposals that are not properly addressed and identified.

- E. The Department must receive all proposals no later than the date and time indicated in Part Four. Contractors mailing their proposals must allow sufficient time for delivery of their proposal by the deadline. Proposals that are not received on time will not be accepted and will be returned unopened to the contractor. Facsimile proposals will not be accepted.

Proposals received prior to the time of opening will be secured unopened.

- F. A responsible officer of the entity or its agent must manually sign the proposal in ink.

## 6. MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn by the contractor prior to the time that proposals are due at the Department. A request to modify or withdraw a proposal must be presented in writing and signed by a responsible officer of the firm.

## 7. INCURRING COSTS

The Department shall not be liable for any cost incurred by the contractor in responding to this SFP.

## 8. PROPOSALS BECOME PUBLIC RECORDS

Proposals and all documentation provided therein become public records and may be viewed by interested parties upon opening of the proposals.

## 9. DISCLAIMER OF LIABILITY

The Department and the State of Nebraska shall incur no obligations to any employer or any other person or entity to receive benefits under the plan resulting from failure of the contractor to perform as required in the contract other than obligations imposed by law.

## 10. ROYALTIES AND PATENTS

The contractor guarantees that it will have full legal right to use data and information involved in the contract. The contract price shall include compensation for all royalties and costs arising from patents, trademarks, and copyrights that are in any way involved in the contract. It shall be the responsibility of the contractor to pay for all such royalties and costs. If the contractor employs any design, device, machinery, material or process covered by patents or copyright, it shall provide for

its use with the patentee or owners and it shall indemnify and hold harmless the Department and the State of Nebraska, its officers and employees from all claims for infringement by reason of its use or handling in any manner.

## 11. INDEPENDENT CONTRACTOR

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The contractor represents that it has, or will secure at its own expense, all personnel required in performing services under this agreement. Subcontractors or other persons engaged in work or services required by contractor under this agreement shall have no contractual relationship with the Department or the State of Nebraska and shall not be considered employees of the Department or the State of Nebraska.

All claims on behalf of any person arising out of employment or alleged employment – including without limit claims of discrimination against the contractor, its officers or its agents – shall in no way be the responsibility of the Department or the State of Nebraska; contractor will hold the Department and the State of Nebraska harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits from the Department or the State of Nebraska, including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay, and retirement benefits.

## 12. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

- A. By submission of this proposal, the contractor certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this agreement:
1. The prices, terms and conditions in this proposal have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, or as to any matter with any other contractor or with any competitor;
  2. Unless otherwise required by law, the prices, terms or conditions which have been quoted in this proposal have not been knowingly disclosed by the contractor and will not knowingly be disclosed by the contractor prior to opening in the case of an advertised procurement or prior to award; and
  3. No attempt has been made or will be made by the contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

B. Each person signing this proposal certifies that:

1. Such person is the person in the contractor's organization responsible within that organization for the decision as to the prices being offered herein and that such person has not participated, and will not participate, in any action contrary to A.1. through A.3., or
2. If the proposal does not include a signature from the person within the contractor's organization responsible for setting prices in the proposal, the proposal must include a statement that:
  - a. The person signing is authorized in writing to act as agent for the persons responsible for pricing decisions for the purpose of certifying that such persons have not participated, and will not participate in any action contrary to A.1. through A.3. above; and
  - b. The persons responsible for setting prices in the proposal have not participated, and will not participate, in any action contrary to A.1. through A.3. above.

### 13. PRICES

Pricing, terms and conditions may be subject to change during the contract period with prior notification to the Department if such changes have been clearly and specifically provided in the contract executed between the Department and the contractor. Other changes to pricing, terms and conditions may not be made without the prior written agreement of the contractor and the Department. Please note that it is *not* the intent of this provision for LCMs or the terms of a subsidy from the voluntary market to be subject to periodic reviews of assigned risk loss experience.

### 14. ORAL PRESENTATION

At the Department's discretion and if requested, contractors shall make oral presentations to supplement proposals. Any costs for such presentation shall be borne by the contractor. These presentations will be held subsequent to the opening of the proposal to provide an opportunity for the contractor to clarify the proposal. The Department shall schedule a time for each oral presentation at the discretion of the Department as set forth in Part Four of this SFP. Should a contractor refuse to honor the request for an oral presentation, rejection of the proposal may result.

### 15. EVALUATION OF THE PROPOSAL

Evaluation and selection of a contractor shall be based on the information submitted in the proposal plus any required oral presentations and demonstrations. The

Department may require further information for purposes of clarification after the proposals are opened and reviewed.

#### 16. SELECTION PROCESS - AWARD EVALUATION CRITERIA

The Department reserves the right to accept or reject any or all proposals and to waive any defect or technicality, and/or to advertise for new proposals where the acceptance, rejection, waiver or advertisement would be in the best interest of the voluntary market and the employers covered by the plan as determined by the Department. Contract award will be based on compliance with mandatory items and evaluation of desirable items indicated throughout this SFP. Complete and accurate responses to all items are necessary for fair evaluation of proposals. Award shall be based on, but not limited to, the consideration of:

- A. The factors listed at Neb. Rev. Stat. § 44-3,158(2)(a): “the cost of coverage to assigned risk employers, the loss control and claims handling services available from the workers’ compensation insurer, the financial condition of the workers’ compensation insurer, and any other relevant factors”;
- B. Whether the proposal will provide a good value for services beyond the minimum requirements specified;
- C. A price/benefit analysis will be conducted and will include all identifiable costs and value that the contractor’s proposed services would provide to insured employers;
- D. The contractor’s ability to meet the timetable required for performance;
- E. The contractor’s ability to fulfill the proposed contract; and
- F. The presence or absence of a voluntary market subsidy, and the expected amount of the subsidy.

#### 17. EXECUTED CONTRACT TO CONSTITUTE ENTIRE AGREEMENT

In the event of contract award, the Department will enter into a contract based upon the contractor’s proposal and any details negotiated relating thereto. The contractor’s proposal, this SFP and any amendments thereto will be incorporated by reference into that contract. The executed contract will then supersede any conflicting representations, commitments, conditions or agreements made orally or in writing prior to the execution of the contract. Failure of the selected contractor to accept these obligations in a written contractual agreement may result in immediate cancellation of the contract award. The Department reserves the right to contract with another compliant contractor.

## 18. NON-PERFORMANCE OF CONTRACT

- A. Failure by the successful contractor to provide or perform the services as specified in the contract for the length of the contract shall be considered non-performance.
- B. Damages: In the event of nonperformance, the contractor may be charged for the costs incurred to acquire replacement services. Damages shall include the costs incurred by the Department in securing a new contract for the WCIP or other coverage under Neb. Rev. Stat. § 44-3,158(2)(c) and costs incurred by the replacement contractor or insurers to establish an administrative system and correct for any deficiencies in services provided to employers. The Department shall submit an itemization of such costs in a timely fashion to the contractor for immediate payment and reimbursement.
- C. The Department, by entering this agreement with the contractor, is under no duty to honor any obligations in the event the contractor fails to perform under the terms of this agreement.

## 19. EMPLOYMENT PRACTICES

- A. The Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §§ 48-1101 to 48-1125, prohibits contractors with the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, to be employed in the performance of such contracts, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin.
- B. The contractor's signature to this proposal is a guarantee of compliance with the Nebraska Fair Employment Practices Act, and breach of this provision shall be regarded as a material breach of contract. The contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this proposal.
- C. Proposals shall only be accepted from contractors who have a Drug-Free Workplace policy filed with the State of Nebraska. Contractors may submit a policy with their proposals if it is not on file.

## 20. PRICING REPRESENTATIONS

The contractor represents that all costs, terms and conditions set forth in the proposed contract and all costs, terms and conditions in addition which the contractor may change under the terms of this contract do not violate any existing federal, state or municipal law, rule or regulation concerning unfair discrimination.

## 21. CONTRACTOR'S QUALIFICATIONS

The contractor may be a single entity, partnership or joint venture. If the contractor is a single entity, then it must be an insurance company licensed to write workers' compensation insurance in Nebraska. If the contractor is a partnership, joint venture or other arrangement involving multiple entities, then it must include one or more insurance companies, all of which must be licensed to write workers' compensation insurance in Nebraska.

Prior to contract award the tentatively selected contractor, if requested, must furnish current information regarding its financial resources and organization within five working days. The contractor shall furnish all such information for this purpose as the Department may request. The Department reserves the right to reject a proposal if the information provided does not satisfy the Department that the contractor is qualified to carry out the requirements of this SFP.

## 22. ASSIGNMENTS

The services to be performed by the contractor shall not be assigned, subcontracted or transferred without the prior written approval of the Department, and the contractor shall not assign any moneys due or to become due under the contract with the Department without prior approval of the Department. The Department shall not unreasonably withhold approval. This requirement shall not apply to the procurement by an insurer of loss adjustment services. This is a mandatory requirement; it will not be waived for any reason.

## 23. HOLD HARMLESS

- A. Contractor will defend, indemnify and save the Department and the State of Nebraska and their officers and employees against all claims, liens and claims of liens for labor performed or material furnished or subcontracted for by contractor without authorization of the Department and against all loss by reason of failure of said contractor to fully perform all obligations under this contract.
- B. The contractor assumes entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury including death or damage to property sustained in connection with or arising out of the acts or omissions of the contractor, its subcontractor(s) and their officers, agents and employees, including losses, expenses or damages sustained by the Department or the State of Nebraska. The contractor shall indemnify and hold harmless the Department and the State of Nebraska and its officers, agents and employees from any and all such losses, expenses, damages, demands and claims and shall defend any suit or action based on any such alleged injury or damage and shall pay all damages, costs and expenses including attorney's fees in connection therewith or resulting therefrom.

#### 24. PRIME CONTRACTOR

If the contractor intends to use subcontractors, this should be clearly explained in the proposal. The prime contractor will be responsible for contract performance whether or not subcontractors are used.

#### 25. NEWS RELEASES

News releases pertaining to a contract award or any part of the proposal shall not be made without the Department's prior approval of the timing and contents of such news releases.

**PART THREE**  
**SPECIAL INSTRUCTIONS TO THE POTENTIAL CONTRACTOR**

**1. REPORTING TO THE DEPARTMENT**

The Department shall be authorized to review any data and files maintained by the contractor concerning the administration of the WCIP. The contractor shall track all key indicators including the number of insureds, payrolls, premiums, claims, losses and loss ratios. The contractor shall collect, store, and report data required to carry out all necessary accounting and statistical reporting and report such data to the NCCI. The data must be separately identified to the NCCI as assigned risk.

Until at least one year past the expiration of this agreement, the contractor shall provide the Department with quarterly reports in an electronic format with no more than a 90-day lag time showing written premiums, earned premiums and incurred losses separately by calendar/accident year or portion thereof. Such reports shall include itemization of all individual losses with an estimated incurred value of \$250,000 or greater. In lieu of reports where this information has been compiled, the Department and the contractor may agree to the exchange of statistical data sufficient to allow the Department to determine these quantities. It is agreed that the Department shall treat detailed information regarding individual claims as confidential.

If the contract involves a subsidy from the voluntary market in the event of catastrophic loss, then, once it has been identified with reasonable certainty that voluntary insurers will be required to reimburse some portion of the assigned risk excess losses, the reports shall include information related to assessment of any subsidy.

Not later than May 1 preceding the expiration of this contract, the contractor shall provide the Department with a profile of the employers written in the WCIP, including class codes or governing class codes, premium sizes and experience modifiers.

In addition, not later than May 1 of each year following the expiration of this contract, the contractor shall provide policy year premium development for a minimum of 3 years after the end of each policy year. Loss development, showing medical and indemnity, case-basis incurred and paid losses, shall be supplied separately for each accident year, for a minimum of 5 years after the end of each accident year. Such reports shall include updates of those individual losses with an estimated incurred value of \$250,000 or greater. As an alternative, loss development may be provided on a policy year basis.

**2. MULTIPLE PROPOSALS**

The contractor may submit multiple proposals and may provide options within its proposals. If the contractor submits options or multiple proposals, the Department



reserves the right to select the proposal and options which it deems to best meet its award evaluation criteria.

### 3. LIMITATION ON USE OF EMPLOYER INFORMATION

The contractor shall be prohibited from soliciting any other portion of a risk insured under the WCIP if that solicitation arises from information contained in the WCIP employer file.

## **PART FOUR SCHEDULE OF EVENTS**

Interested parties are strongly encouraged to provide their e-mail address to Connie Van Slyke, [Connie.VanSlyke@nebraska.gov](mailto:Connie.VanSlyke@nebraska.gov), as e-mail will allow the promptest responses.

August 10 – 5:00 PM	Any questions must be received in writing or via acknowledged e-mail prior to this time by Connie Van Slyke at the Department. Questions will not be accepted over the telephone.
August 17	Answers to questions will be posted to the Department's website no later than this date, although answers to questions and other clarifications may be posted at any time prior to this. Interested parties are urged to provide e-mail contact information to Connie Van Slyke at the Department to assure that they will receive such answers or other clarifications as soon as they are provided.
September 6 – 4:00 PM	Proposals due at the Department.
September 7 – 10:00 AM	Proposals will be opened at the Department.
September 12, 2018	If necessary, oral presentations or clarifications.

The selection of the contractor will be done as soon as possible after bids are opened on September 7, 2018. The length of time will depend on whether oral presentations or other clarifications are necessary. Contractors should plan on having a responsible person available on September 12, 2018, in the event oral presentations or clarifications are necessary.

**PART FIVE**  
**PROVISIONS RELATING TO SUBSIDIZATION BY THE VOLUNTARY MARKET**

**1. OVERVIEW OF SUBSIDY**

Pursuant to Neb. Rev. Stat. § 44-3,158, if the cost of premiums for the contractor to provide assigned risk coverage would be unreasonably high, the contractor and the Director may reach an agreement wherein the contractor covers a portion of the loss incurred. The remainder of the loss would be subsidized by the voluntary market. (Section 44-3,158(2)(b) is reproduced at the end of Part Five for reference.)

**2. BIDS SETTING LCM AT ABOVE 2.50 SHOULD INCLUDE A SUBSIDY OPTION**

Because Neb. Rev. Stat. § 44-3,158(2)(b) only provides for a subsidy “if the Director determines that the cost of workers’ compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement would be unreasonably high,” and § 44-3,158(2)(b) dictates that rates below a 2.50 LCM will be presumed reasonable, the subsidy is only available where experience demonstrates that an LCM over 2.50 is appropriate.

If the Director finds that experience warrants an LCM for the assigned risk plan that would be unreasonably high, negotiation for a 2.50 LCM is the preferred compromise: instead of using an average LCM higher than 2.50, the insurer would agree to lower its average LCM to approximately 2.50 in exchange for the assurance that a subsidy will be available in the event of a catastrophic loss.

If the contractor wishes to retain the option of a subsidy from the voluntary market as provided at Neb. Rev. Stat. § 44-3,158(2)(b), the proposal and resulting agreement should explain why experience warrants an unreasonably high LCM, then propose a compromise including the option of a subsidy, using an average LCM of approximately 2.50 as the agreed-upon rate.

**3. BIDDING THE APPROPRIATE LOSS COST MULTIPLIER**

A 2.50 loss cost multiplier is roughly double the rate level seen in the voluntary market. According to Department of Insurance Bulletin CB-121, amended June 4, 2013, past loss experience appears to indicate this is a reasonable rate level for the assigned risk plan.

The first factor listed at Neb. Rev. Stat. § 44-3,158(2)(a) for the Department to consider in selecting an insurer for the assigned risk plan is the cost of coverage to assigned risk employers. The contractor may wish to bid an LCM lower than 2.50 to obtain a competitive advantage in the bidding process. If a proposal uses an LCM lower than 2.50, a subsidy will not be available because there would be insufficient

grounds for the Director to find that the assigned risk plan's workers' compensation insurance premiums would be unreasonably high in the absence of a subsidy.

Bidders have the option to propose an LCM that is adjusted on a yearly basis, contingent on the percentage of the market that is participating in the pool. Experience shows that when the voluntary market is willing to write almost all employers' workers' compensation insurance, the employers remaining in the pool are the very few that carry the highest risk. A higher LCM when the pool is extremely small may be appropriate.

#### 4. BIDS SHOULD INCLUDE A DEFINITION OF "CATASTROPHIC LOSS"

The current agreement and amendment with Travelers Property Casualty Company of America (Travelers) is effective January 1, 2015 through December 31, 2018. Prior agreements with Travelers were effective July 1, 2000, January 1, 2005, January 1, 2009, and January 1, 2015. Under these agreements, Travelers retains all premiums that it receives and is responsible for all losses incurred with the exception that catastrophic losses will be ceded back to the voluntary market. Catastrophic losses will be apportioned to insurers in proportion to each insurer's direct written premiums, very much like residual market reinsurance pool operating results in many other states.

The definition of "catastrophic losses" under prior contracts was complex and related to high dollar single events. The definition of catastrophic loss under the current contract is tied to the program's annual policy year loss ratio. Losses plus allocated loss adjustment expenses (ALAE) above a 115% loss and ALAE ratio in any single policy year are ceded to the voluntary market. The Department considers an annual aggregate loss plus ALAE ratio of 115% or more for the assigned risk program to be very unlikely – perhaps a 1 in 50 year event.

Proposals should provide a calculation to determine "catastrophic loss" and may include more than one option to set the trigger for a subsidy assessment on the voluntary market.

Voluntary insurers will only be required to reimburse the assigned risk insurer to the extent that the assigned risk insurer has paid the related losses, including losses beyond the agreed-upon trigger for subsidy. As catastrophic losses may be paid over an extended time, assigned risk insurers are advised to factor the risk of collectability into their subsidy proposals.

#### 5. ADMINISTRATION OF SUBSIDY ASSESSMENT

Should a catastrophic loss year occur or appear likely to occur, the Department will take steps to institute sufficient oversight to assure that the assessments on the

voluntary market are accurate and that the contractor is handling claims in a responsible fashion.

The contractor must assume the administrative costs of any subsidy assessment. To assist the contractor's administration of any subsidy, the Department will provide the following information and assistance to the contractor for every calendar year for which a subsidy appears reasonably possible:

- A. Names, mailing addresses and written premium amounts for all insurers and pools with written premiums for workers' compensation insurance in Nebraska. These will be provided within thirty days of receiving a request, but no sooner than six months after the expiration of the calendar year.
- B. A one-time mailing to all insurers licensed to write workers' compensation insurance in Nebraska to explain the subsidization arrangement and to verify channels of communication between the contractor and the voluntary insurer.

Proposals contemplating a subsidy in the event of a catastrophic loss should include a plan for administration of a subsidy assessment. The Department has not promulgated procedures for how a subsidy assessment on the voluntary market would be administered. With the Department's approval, under the current agreement which expires December 31, 2014, Travelers has contracted with the NCCI to handle this work in the unlikely event it would occur. The Department cannot guarantee that the NCCI will agree to the same arrangement in the future.

Statutory Authority for a Subsidy, Neb. Rev. Stat. § 44-3,158(2)(b):

"If the Director determines that the cost of workers' compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement [to provide assigned risk coverage] would be unreasonably high, the director may enter into an agreement in which the assigned risk insurer covers a portion of the losses incurred by the assigned risk employer. Any agreement that involves an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 shall not be considered unreasonably high for the purpose of this section. Pursuant to any such agreement, remaining losses shall be assessed against all workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act based on their workers' compensation premiums written in this state or contributions made to risk management pools. Assigned risk premiums shall be excluded from the basis for such assessments."

**PART SIX**  
**TRAVELERS ASSIGNED RISK LOSS EXPERIENCE FOR NEBRASKA**

Attached are four documents that provide information about the WCIP.

- In-force policy counts, quarterly, from 2006 to the end of 2017;
- WCIP 20 largest classifications in terms of premiums;
- WCIP 20 largest classifications in terms of number of policies; and
- Travelers Indemnity Company's and Travelers Property Casualty Company of America Annual Statement State Page with loss and expense information from 2003 to 2017.

Travelers has written the WCIP since 7/1/2000, which gives 13 full years of premium and loss experience to examine. While the Department receives loss reports showing assigned risk experience only, these losses are on an undeveloped basis. Given the challenge for a person outside Travelers, especially a non-actuary, to develop these losses, we believe that it is more instructive for potential bidders to examine Travelers' Annual Statement State Page experience. Nebraska assigned risk experience constitutes 90% or so of the total Nebraska experience for one of their companies.

Bidders may find the following information useful.

- Travelers currently uses a 2.50 LCM, which they have used for most of the time that they have written the WCIP. From 7/1/2000 through 6/30/2002, the LCM used was 2.44.
- Travelers reports losses over \$250,000 to us separately. Between 7/1/2000 and 12/31/17, there were 123 cases with values of \$250,000 or greater. Of these, only 58 are considered closed, so it is likely that some cases will close with less than \$250,000 being paid, while other losses will develop to greater than \$250,000 paid.

Of these 123 cases, 11 of them are valued between \$1,000,000 and \$2,000,000, while another 2 are valued between \$2,000,000 and \$3,000,000. One case is valued over \$3,000,000. The total current incurred amount for all cases is \$72,084,899.



Calendar Quarter	In-Force Policy Count
1st qtr 2006	2,280
2nd qtr 2006	2,330
3rd qtr 2006	2,146
4th qtr 2006	2,089
1st qtr 2007	1,975
2nd qtr 2007	1,906
3rd qtr 2007	1,808
4th qtr 2007	1,735
1st qtr 2008	1,904
2nd qtr 2008	1,618
3rd qtr 2008	1,583
4th qtr 2008	1,543
1st qtr 2009	1,508
2nd qtr 2009	1,476
3rd qtr 2009	1,458
4th qtr 2009	1,434
1st qtr 2010	1,396
2nd qtr 2010	1,368
3rd qtr 2010	1,365
4th qtr 2010	1,326
1st qtr 2011	1,285
2nd qtr 2011	1,334
3rd qtr 2011	1,374
4th qtr 2011	1,382
1st qtr 2012	1,416
2nd qtr 2012	1,504
3rd qtr 2012	1,579
4th qtr 2012	1,670
1st qtr 2013	1,734
2nd qtr 2013	1,845
3rd qtr 2013	1,931
4th qtr 2013	1,966
1st qtr 2014	1,992
2nd qtr 2014	2,018
3rd qtr 2014	2,175
4th qtr 2014	2,186
1st qtr 2015	2,187
2nd qtr 2015	2,276
3rd qtr 2015	2,285
4th qtr 2015	2,302
1st qtr 2016	2,219
2nd qtr 2016	2,303
3rd qtr 2016	2,363
4th qtr 2016	2,402
1st qtr 2017	2,334
2nd qtr 2017	2,319
3rd qtr 2017	2,288
4th qtr 2017	2,248

As can be seen from this exhibit, the plan size declined for until 2011, and then grew until late 2016, and recently the counts have started to decline.

**Nebraska Workers Compensation Assigned Risk Plan  
20 Largest Classifications in Terms of Premiums**

<b>Class</b>	<b>Class Description</b>	<b># Policies</b>	<b>Premiums</b>
5551	Roofing—All Kinds & Drivers.	131	\$1,049,429
8810	Clerical Office Employees NOC.	199	\$1,045,876
5645	Carpentry—Construction of Residential Dwellings Not Exceeding Three Stories in Height	156	\$870,718
7711	Firefighters & Drivers—Volunteer	240	\$745,758
2089	Packing House—All Operations.	4	\$617,676
7228	Trucking--Local Hauling Only--and Drivers	63	\$571,847
0083	Artificial Insemination of Cattle—All Other Employees & Drivers	41	\$571,646
3824	Automobile, Bus, Truck or Trailer Body Mfg. NOC	3	\$534,010
8288	Cattle Dealer & Salespersons, Drivers.	21	\$522,342
0106	Stump Removal Operations—By Specialist Contractor & Drivers	52	\$418,635
7229	Automobile	64	\$406,460
0037	Farm	47	\$344,594
8380	Air Conditioning Systems—Automobile—Installation, Service or Repair & Drivers	28	\$274,271
5403	Carpentry—NOC	35	\$237,454
9154	Theater NOC—All Other Employees	8	\$231,867
8742	Salespersons or Collectors—Outside	75	\$231,626
5445	Wallboard, Sheetrock, Drywall, Plasterboard, or Cement Board Installation—Within Buildings & Drivers	25	\$228,678
5606	Contractor—Project Manager, Construction Executive, Construction Manager or Construction Superintendent	39	\$216,487
9014	Chimney Cleaning—Residential—No Chimney Cleaning Above Ground Level & Drivers	46	\$214,689
8842	Group Homes—All Employees & Salespersons, Drivers	6	\$190,226

**Nebraska Workers Compensation Assigned Risk Plan  
20 Largest Classifications in Terms of # of Policies**

<b>Class</b>	<b>Class Description</b>	<b># Policies</b>	<b>Premiums</b>
7711	Firefighters & Drivers—Volunteer	240	\$745,758
8810	Clerical Office Employees NOC	199	\$1,045,876
5645	Carpentry—Construction of Residential Dwellings Not Exceeding Three Stories in Height	156	\$870,718
5551	Roofing—All Kinds & Drivers	131	\$1,049,429
8742	Salespersons or Collectors—Outside	75	\$231,626
7229	Trucking—Long-Distance Hauling—All Employees & Drivers	64	\$406,460
7228	Trucking—Local Hauling Only—All Employees & Drivers	63	\$571,847
0106	Tree Pruning, Spraying, Repairing—All Operations & Drivers	52	\$418,635
0037	Farm—Field Crops & Drivers	47	\$344,594
9014	Janitorial Services by Contractors—No Window Cleaning Above Ground Level & Drivers	46	\$214,689
0083	Artificial Insemination of Cattle—All Other Employees & Drivers	41	\$571,646
5606	Contractor—Project Manager, Construction Executive, Construction Manager or Construction Superintendent	39	\$216,487
9084	Bar, Discotheque, Lounge, Nightclub or Tavern.	35	\$74,897
5403	Carpentry—NOC	35	\$237,454
5535	Awning Erection—Metal—Erection of Metal Awnings Exclusively & Drivers	33	\$134,057
9102	Park NOC—All Employees & Drivers.	31	\$168,483
5474	Painting NOC & Shop Operations, Drivers	28	\$93,368
8380	Automobile-Service or Repair Center and Drivers	28	\$274,271
3724	Door—Installation—Overhead & Drivers	26	\$176,174
9082	Restaurant NOC	26	\$111,662



THESE COLUMNS ARE ALL STATE PAGE COLUMNS AND INCLUDE RELATIVELY SMALL AMOUNTS OF VOLUNTARY BU:

Year	Company Name	State Page Direct Premiums Written	Calendar Year Written Premiums - Assigned Risk Only*	Direct Premiums Earned	Dividends	Direct Premiums Unearned	Direct Losses Paid	Direct Losses Incurred	Direct Losses Unpaid	Direct Defense and Cost Containm ent Expense Paid	Direct Defense and Cost Containm ent Expense Incurred	Direct Defense and Cost Containm ent Expense Unpaid	Commissi on and Brokerage Expenses	Taxes, Licenses and Fees	Policy Year Written Premiums - Assigned Risk Only*
2003	Travelers Ind Co	39,983,724	38,811,272	36,409,466	0	17,398,974	9,251,736	18,164,556	24,857,487	711,716	1,697,678	2,420,049	1,489,329	1,055,659	35,947,405
2004	Travelers Ind Co	34,012,284	32,428,043	36,973,047	0	14,438,211	13,126,453	22,093,332	33,824,366	986,374	1,885,900	3,319,576	1,359,927	1,538,436	32,186,215
2005	Travelers Ind Co	24,217,744	23,238,617	27,257,294	0	11,369,391	11,970,230	18,369,354	40,303,801	1,035,229	1,267,712	3,574,163	986,369	882,429	24,889,129
2006	Travelers Ind Co	21,593,702	20,747,077	23,311,421	0	9,651,672	8,872,853	13,125,838	44,556,786	1,055,436	882,474	3,401,201	866,882	-1,294,415	19,407,917
2007	Travelers Ind Co	15,240,621	13,008,811	17,305,062	0	7,674,807	9,036,504	9,413,964	49,824,215	916,449	820,107	3,431,154	746,173	1,735,703	14,462,686
2008	Travelers Ind Co	17,058,821	12,844,324	17,423,160	52,272	7,310,469	9,139,326	6,202,148	46,887,037	895,487	737,173	3,272,841	811,018	78,330	12,296,017
2009	Travelers Ind Co	15,011,650	10,070,845	15,495,247	56,530	6,826,871	9,917,772	8,509,710	45,478,975	927,028	462,638	2,808,451	895,774	274,315	10,422,717
2010	Travelers Ind Co	14,845,875	9,924,424	14,998,769	152,963	6,673,977	9,754,966	12,578,891	48,302,901	896,150	1,249,149	3,161,451	812,372	400,701	10,191,738
2011	Travelers Ind Co	16,584,342	10,993,936	16,473,714	86,471	6,784,605	10,272,723	12,781,593	50,811,770	1,004,200	1,223,357	3,380,608	957,600	441,149	11,415,265
2012	Travelers Ind Co	24,939,382	20,888,643	20,610,787	106,999	11,113,200	11,426,304	9,580,667	48,966,133	1,081,894	1,303,472	3,602,186	1,188,020	553,696	19,496,153
2013	Travelers Ind Co	25,407,465	22,200,436	25,388,797	52,048	11,131,868	12,955,127	15,047,549	51,058,556	1,283,634	1,857,097	4,175,648	1,141,489	513,293	23,999,538
2014	Travelers Ind Co	30,493,717	25,876,758	28,662,067	68,771	12,963,518	11,893,081	17,727,636	56,893,111	1,292,129	1,581,497	4,465,016	1,290,049	812,000	25,001,064
2015	Travelers Prop Cas Co of Am.	26,963,572	23,115,494	18,038,071	143,395	10,575,091	3,588,779	12,171,714	25,338,559	278,552	1,079,908	2,199,371	1,268,902	585,783	21,734,893
2016	Travelers Prop Cas Co of Am.	24,314,232	19,794,711	24,702,177	70,279	10,187,146	7,540,131	12,680,348	30,478,776	541,682	687,054	2,344,744	1,236,677	533,230	19,576,223
2017	Travelers Prop Cas Co of Am.	18,812,478	15,321,975	21,032,047	18,643	7,967,577	7,012,024	11,388,978	34,855,730	700,346	1,250,189	2,894,587	1,051,888	394,318	16,921,064

Note: All data is complete through 12/31/2017

\* Column D differs from Column C due to voluntary business that the Travelers Indemnity Company wrote in Nebraska for each calendar year. Assigned Risk business has been processed through the Travelers Property Casualty Company of America since January 1, 2015. Policy year premiums written by Travelers in the Assigned Risk Plan are shown in Column Q and are inception to date through December, 2017.

**Nebraska WC Assigned Risk Plan**  
**Policy Effectives July 1, 2000 through December 31, 2017**  
**Data Evaluated as of Dec. 31, 2017**

Number of Claims over \$250,000:	123
Number of Claims over \$250,000 that are closed:	58
Number of Claims between \$1 million and \$2 million:	11
Number of Claims between \$2 million and \$3 million:	2
Number of Claims over \$3 million:	1
Total Incurred Value of all Claims over \$250,000:	72,084,899